In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 271

CASSIUS MARSELLUS CLAY, JR., A/K/A MUHAMMAD ALI,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ADDITIONAL MEMORANDUM FOR THE UNITED STATES

This additional memorandum is submitted on the question of the effect of this Court's recent decision in *Alderman* v. *United States*, No. 133, O.T., 1967, decided March 10, 1969, on the disposition of this case.

In a Supplemental Memorandum for the United States which we filed in this case in August, 1968, we informed the court that on five occasions petitioner participated in conversations that were overheard during the course of electronic surveillances directed at others and that in one instance the surveillance was being maintained solely for the purpose of gathering foreign intelligence information. We urged, however,

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that this case presented a peculiar fact situation where the record itself demonstrated that the overhearing of petitioner's conversations could not possibly have had any effect on the prosecution. We continue to adhere to that position and urge that, notwithstanding the Court's opinion in *Alderman,* certiorari should be denied in this case.

If the Court disagrees with our assessment of the record and believes that the case must be remanded to the district court for a hearing on the effect of electronic surveillance, we ask the Court to provide in its order that the government need not disclose to the defendant the log of the one surveillance which was being conducted to gather foreign intelligence information. We are submitting a copy of that log to the Court for its *in camera* examination.

In June, 1965, petitioner was overheard participating in one conversation which was monitored during the course of an electronic surveillance being conducted solely to gather foreign intelligence information. This surveillance had been specifically authorized by the Attorney General. On an examination of the log of that surveillance it is apparent from the nature of the premises involved that the purpose of the surveillance was to gather foreign intelligence information and that the government could not disclose, except to a court, where the surveillance occurred.

It is also clear from the log that the brief conversation overheard—which is recounted in a half page entry—had no conceivable relation to the prosecution of petitioner for refusing to submit to induction into the armed forces of the United States. The overhear-

ing occurred in June, 1965, and petitioner did not refuse to submit to induction until April 28, 1967. Petitioner did not claim to be a conscientious objector until February, 1966, and he did not assert a claim of ministerial exemption until August, 1966.

In these circumstances, where it is evident that the surveillance was directed solely at obtaining foreign intelligence information and where it can easily and quickly be determined that the overhearing of petitioner had no relation to his criminal conviction, we ask the Court not to require the government to either disclose the installation to petitioner or dismiss the prosecution, for, as is apparent from the nature of the premises involved, the government could not make such disclosure. See also Petition for Rehearing *Ivanov* v. *United States,* No. 11, this Term; Additional Memorandum for the United States, *Emmanual Blaz Mrkonjic-Ruzic* v. *United States,* No. 680, this Term.